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STATE OF DELAWARE  
**DEPARTMENT OF STATE**

DIVISION OF PROFESSIONAL REGULATION

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PUBLIC MEETING MINUTES:	<b>BOARD OF FUNERAL SERVICES LEGISLATIVE SUBCOMMITTEE</b>
MEETING DATE AND TIME:	<b>Tuesday, May 2, 2011, 10:00 a.m.</b>
PLACE:	<b>861 Silver Lake Boulevard, Dover, Delaware Conference Room B, second floor of the Cannon Building</b>
MINUTES APPROVED:	July 27, 2011

**SUBCOMMITTEE MEMBERS PRESENT**

Chad Chandler, Subcommittee Chairman, Professional Member  
Robert O. Wright, Professional Member

**DIVISION STAFF/DEPUTY ATTORNEY GENERAL**

Danny Stevenson, Deputy Attorney General  
Michele Howard, Administrative Specialist II  
Kay Warren, Deputy Director of the Division of Professional Regulation  
Pamela Zickafoose, Executive Director of the Board of Nursing

**SUBCOMMITTEE MEMBERS ABSENT**

William Torbert, Professional Member

**OTHERS PRESENT**

None

**CALL TO ORDER**

Mr. Chandler called the meeting to order at 10:01 a.m.

**REVIEW AND APPROVAL OF MINUTES**

Mr. Wright made a motion, seconded by Mr. Chandler, to approve the minutes of the April 5, 2011 meeting as presented. The motion was unanimously carried.

**BUSINESS**

**Rules and Regulations for Advertising – Review Proposed Draft from DAG Stevenson**

Mr. Stevenson distributed a draft of rules and regulations to the Board. After review, Mr. Wright made a motion, seconded by Mr. Chandler, to approve the draft language for advertising. The motion was unanimously carried. The draft will be presented to the full Board at its next meeting.

Ms. Warren entered the meeting.

**Parking Requirements for Funeral Establishments – Report from DAG Stevenson**

Mr. Stevenson advised the Committee of a Superior Court case in Delaware in which ABC tried to regulate parking. Mr. Stevenson advised that the Supreme Court ruled that parking is regulated by city ordinances, and cannot be regulated statewide. Mr. Stevenson went on to say that the parking ordinance for Wilmington obviously has to be different than the parking

ordinance for Dover or Selbyville, for example. Mr. Wright said that churches have parking requirements by their seating capacity, and asked if Mr. Stevenson had researched Pennsylvania law regarding parking requirements. Mr. Stevenson did not research Pennsylvania law, and advised that he has to follow Delaware cases. Mr. Stevenson confirmed for Mr. Wright that the case he referred to was for the Alcoholic Beverage Commission (ABC). Mr. Wright said that beverage stores don't actually offer a facility where you come in and are seated, so he's not sure the case applies to this discussion. Mr. Stevenson will continue to research to make sure that he is correct. Mr. Stevenson advised that the State Constitution gives the power to local ordinances to develop things such as parking, building height, and occupancy. Mr. Wright asked if a federal law would apply to a city that did not have ordinances regulating parking. Mr. Stevenson responded that the regulations would still be up to the city. Mr. Stevenson asked if Wilmington has any parking regulations. Mr. Wright answered no. Mr. Chandler stated that the size of a building determines a certain number of required parking spaces. Mr. Wright reported that his son recently built a new church in Wilmington and it was required to have a certain number of parking spaces in accordance with its seating capacity. Ms. Howard advised that parking requirements are normally covered under the zoning ordinance for a particular parcel. Mr. Wright stated that a funeral home is allowed within the R-3 Residential Zoning District in Wilmington, but R-3 Zoning doesn't specify how many parking spaces a funeral establishment must have, only churches. Ms. Howard stated that individual parcels of land fall under specific zoning districts which should specify what is or is not required. Mr. Wright advised that the City of Wilmington does not zone by lot location, but by usage. Mr. Stevenson clarified that the Supreme Court case he previously referred to was about a bar that opened in Reboboth, in which several residents who lived in the vicinity of the bar were opposed to its opening and complained to the Alcoholic Beverage Commission, who then brought up the parking issue. The court ruled that parking is a part of local zoning ordinances, and was not something that ABC could tackle. Mr. Stevenson did further research and did not find anything that overruled the court's decision. He will continue to research the matter. Mr. Wright recommended that Mr. Stevenson review Pennsylvania law. Mr. Wright stated that he spoke with Jimmy Dipinto who is the Zoning Administrator for the City of Wilmington. Ms. Howard pulled up the Zoning Map for the City of Wilmington online and showed it to the committee members. Ms. Howard explained that each parcel falls within a specific zoning district and the zoning for a specific location, whether it be residential or commercial, should include parking requirements, if any. Mr. Stevenson asked if the City of Wilmington was the main problem related to parking. Mr. Chandler does not have an establishment within the city limits. Mr. Wright has two establishments within the city limits of Wilmington, one with parking and one without. Mr. Chandler does not believe there is a problem with parking that the Board needs to address. Mr. Wright stated that with certain public buildings, there is a requirement for handicapped parking. Mr. Stevenson advised that he will contact Jimmy Dipinto regarding zoning for the City of Wilmington. Mr. Wright stated that if the Legislative Subcommittee is looking at the total picture, that parking should be incorporated. Mr. Stevenson recommended that the discussion be tabled until the next regular Board meeting. Mr. Chandler and Mr. Wright agreed to table the discussion.

#### Discussion of Licensure by Reciprocity

Mr. Stevenson distributed a summary of licensing requirements for New Jersey, Maryland and Virginia. Mr. Stevenson advised that the summary reflects that these three states have very similar licensing requirements to Delaware. Mr. Stevenson further advised that New Jersey determines if applicants from other states have met requirements that are substantially similar to New Jersey. He also advised that both Virginia and Maryland will consider licensing applicants from other states on a case-by-case basis. Mr. Chandler asked if all three states required a passing score on the national examination, and Mr. Stevenson confirmed. Mr. Stevenson stated that Pennsylvania does not consider Delaware to be a substantially similar state, which is what sparked this issue. Mr. Stevenson advised that if Delaware changes its licensing standards, it

must be for the betterment of the industry and the protection of the community. Mr. Chandler asked if Delaware could sign a reciprocal agreement with another state. Mr. Wright is concerned that a small state like Delaware could become overpopulated with people in the funeral industry. Mr. Wright stated that in the city of Philadelphia, there are 107 African-American funeral homes; if 25 of Philadelphia's African-American funeral homes note that Wilmington only has 4 African-American funeral homes and decide to open funeral homes in Wilmington, then "we'll get blown out of the door". Mr. Chandler asked if you could own a funeral home with a reciprocal license. Mr. Stevenson advised that if Delaware grants you a funeral director's license by reciprocity, then, yes, you can own a funeral home in Delaware. Mr. Chandler stated that was "very generous". Mr. Stevenson stated that most of the other states he researched offered the same. Mr. Wright stated that Maryland would not allow him to have a full license, only a limited license, and that Delaware is giving its licenses away. Mr. Wright added that Pennsylvania and Maryland offer a Limited License, but that Delaware does not offer a Limited License. Ms. Howard advised that Delaware does offer a Limited License. Mr. Chandler stated that Delaware should not be giving out full licenses to applicants from other states, but rather only grant Limited Licenses to out-of-state applicants. Ms. Howard read aloud from the Board's website the specifics of what a Delaware Limited License will allow. Mr. Wright and Mr. Chandler agreed that "returning a body to Delaware for final disposition" means conducting a funeral. Mr. Chandler stated that he had taken numerous cases where he took a body to another state and had a burial. Mr. Wright and Mr. Chandler agreed that in order to obtain a full Funeral Director's license in the state of Delaware, an applicant must be required to complete a one-year apprenticeship in Delaware. Ms. Warren asked why Pennsylvania does not accept Delaware's licensees for Funeral Director licensure through reciprocity. Mr. Stevenson and Ms. Howard advised that Pennsylvania's licensing standards are more than those of Delaware, and offered Ms. Warren a copy of a written comparison of the Pennsylvania and Delaware licensing laws. Mr. Wright stated that he recently had a very extensive conversation with Clifford DeBaptiste, who was the President of the Pennsylvania Funeral Board for about six years. Mr. Wright asked for clarification as to why the statement could be made that Pennsylvania does not offer reciprocal licenses to Delaware because their licensing standards are more than those of Delaware. Ms. Howard explained that if a state will not license an applicant who is licensed in another state, it is generally because the original state of licensure does not have substantially similar licensing laws. Mr. Stevenson stated that Pennsylvania's standards are different than those of Delaware, and that he was under the assumption that Pennsylvania had already "voted our licensees down". Mr. Chandler and Mr. Wright denied knowledge of that. Mr. Stevenson added that it was his understanding when he took over as the Board's DAG, that the Board's former DAG, Eileen Heeney, had researched the difference in Delaware and Pennsylvania licensing laws due to Pennsylvania denying licensure to Delaware funeral directors. Mr. Wright stated that he was one of the funeral directors denied by Pennsylvania, and was advised that he would need to complete a one-year apprenticeship in Pennsylvania in order to obtain licensure there. Ms. Howard stated that we grant licenses to applicants from Pennsylvania because they meet our licensing standards, and that Pennsylvania does not grant licenses to applicants from Delaware because we do not meet their licensing standards. Mr. Wright stated that we need to look at how large the state of Pennsylvania is compared to the state of Delaware, in terms of business. Mr. Wright added that there are more funeral homes in the city of Philadelphia than there are in the entire state of Delaware. Mr. Wright stated that conglomerates and larger firms from the Pennsylvania area are able to "muscle their way in to this little area and take away business". Mr. Wright stated that he may need to file a class-action lawsuit to get his Pennsylvania license and "make some people recognize this". Mr. Chandler added that we need to protect funeral directors and the state of Delaware, and that he is concerned that we are giving our licenses away to companies that could come in and put him out of business. Mr. Stevenson advised that the Board could add standards to the requirements for obtaining a reciprocal funeral director's license, such as licensure from a state deemed substantially similar to Delaware AND a one-year apprenticeship in Delaware. Mr. Wright stated that he lost a case over the past weekend to a funeral director

from Chester because “he got a Delaware license on give-away” and he owns a cemetery. He added that the deceased was a Delawarean. Mr. Stevenson stated that he may need to ask Allison if we can add rules and regulations governing reciprocal licenses, or if we need legislative changes to the statute. Mr. Stevenson asked Ms. Warren what her experience had been with statute changes. Ms. Warren recommended adding the item to the Board’s agenda for discussion so that stakeholders can hear the issue. Ms. Warren also recommended that we find out what the feeling is of other funeral directors in the state on this topic, and whether or not there would be any opposition. Mr. Wright stated that this topic was recently discussed at the last Association meeting, where his son is the President. Mr. Wright stated that the State Association meetings now include a *Report From Board Member* and asked for confirmation that the Board meetings were public information. Mr. Stevenson confirmed. Mr. Wright further stated that he reported at the Association meeting on behalf of the Board and advised Ms. Warren that the Association would not be opposed to a statutory change regarding reciprocal licensure. Mr. Wright stated that the Board needs to make its decision and “when it gets to the legislators we let them handle that”. Ms. Warren asked the Committee Members what problem they were trying to fix. Mr. Wright answered that they want to add a one-year apprenticeship in Delaware to the requirements for a reciprocal license, similar to what is required by Pennsylvania. Ms. Warren asked if that change would make Delaware substantially similar to Pennsylvania. Mr. Wright confirmed. Ms. Howard advised that the difference in Pennsylvania’s licensing standards and those of Delaware is that Pennsylvania has an age requirement of 21, whereas Delaware has no age requirement; additionally, the difference mainly lies in the educational requirements. Ms. Howard read aloud Pennsylvania’s educational requirements for licensure, as provided by DAG Eileen Heeney in November 2010. Mr. Wright stated that Pennsylvania does not have the educational requirements read aloud by Ms. Howard, and asked if he could invite Cliff (a past President of the Pennsylvania Board) and Hari Close (President of the Maryland Board) to a Board meeting. Mr. Stevenson confirmed that Mr. Wright could invite anyone he wanted to attend a Board meeting. Mr. Stevenson stated that he believed the issue the committee was trying to address was making Delaware’s licensing laws substantially similar to other states. Mr. Wright disagreed and stated that the issue the Committee was trying to address was that the Division of Professional Regulation is harming “our” business by giving away funeral director licenses to applicants from other states, when “we” can’t go into that state for a reciprocal license, regardless of education requirements. Ms. Warren stated that Delaware would have to increase its reciprocal licensure requirements. Mr. Chandler asked Mr. Stevenson if he could practice law in other states. Mr. Stevenson advised that most states have a requirement to be met, and every state is different. Mr. Chandler recommended tabling the discussion until the next Board meeting. Mr. Wright and Mr. Stevenson agreed.

#### Discussion of Inspections for Funeral Establishments

Mr. Chandler stated that he believes requiring inspections of funeral establishments is a good idea. Mr. Chandler asked who would pay for the inspections. Mr. Wright stated that Director Collins had advised at the last meeting that inspections could hypothetically cost between \$33,000 and \$20,000, and that we didn’t necessarily need to hire an inspector solely for funeral establishments. Mr. Wright stated that he had done some research online since our last meeting, and that the Delaware Funeral Establishment application does not require a Safety Shower or Eyewash Station, which are federal requirements. Mr. Chandler asked if we should update the list of establishment requirements before we proceed with inspections. Mr. Wright stated that once we start inspecting funeral establishments, the inspector could use the national requirements for a prep room as a checklist. Mr. Stevenson advised that the law would need to be revised to require and allow inspections. Mr. Stevenson read aloud from the Board of Cosmetology’s statute regarding establishment inspections, and stated that Director Collins was receptive to the idea of funeral establishment inspections. Ms. Warren added that Director Collins was concerned about the resources to fund the inspections. Mr. Chandler recommended

charging the cost of a funeral establishment inspection to the funeral establishment, possibly every 5 years. Mr. Wright stated that most other states require inspections every 2 to 3 years. Mr. Stevenson stated that Director Collins had suggested that the Division may contract with one inspector to handle both Cosmetology and Funeral Establishment inspections to justify the resources. Ms. Warren advised that the cost of inspections will eventually be included in how the Division develops licensure fees. Ms. Warren left the meeting. Mr. Wright asked Mr. Stevenson for a copy of the section of the Board of Cosmetology's statute regarding establishment inspections, so that he may share it at the next State Association meeting. Mr. Stevenson advised that the legislature must change the statute, but the Board can propose rules and regulations governing inspections, such as ventilation requirements and square footage requirements. Ms. Zickafoose entered the meeting. Mr. Wright suggested using federal guidelines. Mr. Stevenson recommended researching requirements of other states. Mr. Wright recommended that Mr. Stevenson review the FDA website for a list of federal guidelines. Mr. Stevenson read aloud a list of funeral establishment requirements of New Jersey. Mr. Wright reported that 23 of the states represented at the national annual meeting in Myrtle Beach, SC, have an inspection requirement. Mr. Wright made a motion, seconded by Mr. Chandler, to move forward with the desire to begin inspections of funeral establishments. The motion was unanimously carried. This item will be added to the next Board meeting agenda for discussion. Mr. Chandler stated that he is interested to hear the opinions of professional Board members, Mr. Torbert and Mr. Fletcher. Mr. Wright asked if Mr. Fletcher was still on the Board and Ms. Howard confirmed. Mr. Stevenson agreed to compose a list of inspection requirements for review at the next Board meeting.

#### **PUBLIC COMMENT**

Pamela Zickafoose introduced herself as the Executive Director of the Board of Nursing, and advised that she is also the Executive Director of the Board of Funeral Services. Ms. Warren re-entered the meeting. Ms. Zickafoose stated that she believes the Safety Shower and Eyewash Station are good things to have, particularly if an establishment is using formaldehyde. Ms. Warren introduced herself as working in the Director's office.

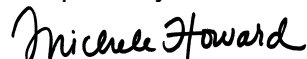
#### **NEXT MEETING**

Ms. Howard will email the Committee members with possible dates for the next meeting.

#### **ADJOURNMENT**

There being no further business, Mr. Chandler made a motion, seconded by Mr. Wright, to adjourn the meeting. The motion was unanimously carried.

Respectfully submitted,



Michele Howard  
Administrative Specialist II